Raven Services Corporation d/b/a Raven Government Services, Inc. *and* International Union of Operating Engineers, Local 826, AFL–CIO *and* International Union of Operating Engineers, Local 351, AFL–CIO. Cases 16–CA–18516, 16–CA–18761, and 16–CA–18841

June 30, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On December 11, 1997, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record[1] in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order, as modified.[4]

We agree, for the reasons fully set forth in *Caterair International*, 322 NLRB 64 (1996), that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition from the Union. We adhere to the view, reaffirmed by the Board in that case, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." Id. at 68.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Bldg. Material v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In the *Vincent* case, the court summarized the court's law as requiring that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' § 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." Id. at 738.

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, we have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the employer's withdrawal of recognition. In contrast, an affirmative bargaining order, with its attendant bar to raising a question concerning the union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representa-

[1] The Respondent has requested oral argument. This request is denied as the record, exceptions, and briefs adequately present the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) by refusing to provide the Union with requested information, Member Hurtgen does not rely on the judge's analysis insofar as it may be read to suggest that a request for information, or the passage of time since impasse had been declared, would break the bargaining impasse. Rather, Member Hurtgen finds that, in the circumstances of this case, the Union's request for information, for the asserted purpose of formulating new bargaining proposals, obligated the Respondent to provide that information and to meet with the Union for bargaining.

[3] We affirm the judge's rejection of the Respondent's argument that a management rights clause in the contract proposal that it unilaterally implemented after a bargaining impasse justified subsequent unilateral changes in unit employees' terms and conditions of employment. See *Control Services*, 303 NLRB 481, 484 (1991), enfd. mem. 975 F.2d 1551 (3d Cir. 1992).

In agreeing with the judge and his colleagues that the Respondent violated Sec. 8(a)(5) by unilaterally changing employees' terms and conditions of employment, Member Hurtgen finds that the nonagreed upon management-rights clause, which the Respondent previously implemented as part of its final offer at impasse, does not privilege the Respondent's subsequent unilateral changes to the status quo.

We agree with the judge that the Respondent's withdrawal of recognition was tainted by its serious unremedied unfair labor practices, including its refusal to provide information to the Union, unilateral changes in terms and conditions of employment, and direct dealing with its employees. We also agree that, in any event, the hearsay report that the Respondent received of a decertification petition that had been circulating several months prior to its withdrawal of recognition, and the alleged "inactivity" of the Union, did not provide the Respondent with sufficient grounds to support a good-faith doubt that the Union retained the support of a majority of the unit employees. Our conclusion in this regard is not altered by the Supreme Court's decision in *Allentown Mack Sales & Service v. NLRB*, 118 S.Ct. 818 (1998), which issued subsequent to the judge's decision. In that case, the Court held that "doubt" meant "uncertainty," so that the test could be phrased in terms of whether the employer "lacked a genuine, reasonably-based uncertainty about whether [the union] enjoyed the continuing support of a majority of unit employees." Id. at 823. We find that the Respondent's asserted basis for its withdrawal of recognition is insufficient, regardless of whether the test is phrased in terms of "good faith reasonable doubt" of the Union's majority support or "genuine, reasonable uncertainty about whether the Union enjoyed the continuing support of a majority of unit employees." See *Henry Bierce Co.*, 328 NLRB 646 (1999).

Member Hurtgen agrees with his colleagues that the employee disaffection from the Union was tainted by the Respondent's antecedent unfair labor practices. Member Hurtgen does not reach the issue of whether, absent such unfair labor practices, the disaffection would have been sufficient to privilege a withdrawal of recognition. See *Allentown Mack v. NLRB*, supra.

[4] The Respondent shall make unit employees whole for losses resulting from its unlawful unilateral changes in accord with *Ogle Protection Service*, 183 NLRB 682 (1970), rather than *F. W. Woolworth Co.*, 90 NLRB 289 (1950), cited by the judge. Furthermore, we shall modify the contingent notice-mailing provision in the judge's recommended order in accord with *Excel Container*, 325 NLRB 17 (1997).

tion because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation.

Moreover, we note that, in addition to unlawfully withdrawing recognition, the Respondent also refused to bargain with the Union following a lengthy impasse in bargaining over an initial contract by refusing the Union's requests for relevant and necessary information, unilaterally eliminating job classifications, changing wage rates, and implementing a shift differential and training program, and bypassing the Union and dealing directly with unit employees on these and other terms and conditions of employment. We further note that the evidence in this case fails to establish that the Union ever lost its majority status. Even if it did, that loss of majority would not reflect employee free choice under Section 7, but the effect of the Respondent's unfair labor practices described above. We find that these additional circumstances further support giving greater weight to the Section 7 rights that were infringed by the Respondent's unlawful withdrawal of recognition.

(2) The affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

(3) A cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent's violations because it would permit a decertification petition to be filed before the Respondent had afforded the employees a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unfair in circumstances such as those here, where litigation of the Union's charges took several years and the Respondent's unfair labor practices were of a continuing nature and were likely to have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case.[5]

[5] Member Hurtgen agrees that, based on the conduct in the instant case, an affirmative bargaining order is appropriate. More particularly, the Respondent engaged in substantial 8(a)(5) conduct prior to the ultimate of 8(a)(5) violations (the withdrawal of recognition). In these circumstances, it is appropriate to give the Union a reasonable period in which to seek to regain the status that it enjoyed prior to the unlawful conduct.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Raven Services Corporation d/b/a Raven Governmental Services, Inc., Fort Worth, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following as paragraph 2(f).

"(f) Within 14 days after service by the Region, post at the facility in Fort Worth, Texas, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or removed its presence from the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 15, 1996."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively interrogate you about your union support or activities.

WE WILL NOT withdraw recognition from and refuse to recognize and bargain with International Union of Operating Engineers, Local 351, AFL–CIO as the exclusive collective bargaining agent of our employees in the following appropriate unit:

INCLUDED: All service and maintenance employees working for the Employer at the Western Currency Plant in Fort Worth, Texas.

EXCLUDED: All other employees, including office clerical employees, quality control employees and administrative assistants, supervisors, including weekend supervisors, and guards as defined in the Act.

WE WILL NOT fail and refuse to furnish the Union with information necessary and relevant for bargaining on behalf of the unit employees.

WE WILL NOT bypass the Union as the exclusive collective bargaining agent of the unit employees and WE WILL NOT deal directly with the employees concerning rates of pay, wages, hours, and other terms and conditions of employment and WE WILL NOT institute unilateral changes in these terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, recognize and on request, bargain with the Union and if an understanding is reached, embody it is a signed agreement.

WE WILL furnish to the Union in a timely manner the information requested by the Union for bargaining.

WE WILL on request rescind any of the unilateral changes found unlawful herein.

WE WILL make the aforesaid bargaining unit employees whole for any loss of wages or benefits incurred as a result of our actions found unlawful, with interest.

RAVEN SERVICES CORPORATION D/B/A RAVEN GOVERNMENT SERVICES, INC.

Timothy L. Watson, Esq., for the General Counsel.
E. D. David, Esq. (David & Kamp L.L.C.), of Newport News, Virginia, for the Respondent.
Bernard Middleton, Esq. (Provo & Humphrey), of Houston, Texas, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN**,** Administrative Law Judge. This case was heard before me on September 15, 1997, in Fort Worth, Texas, pursuant to an order consolidating cases, consolidated amended complaint and notice of hearing filed by the Regional Director for Region 16 of the National Labor Relations Board (the Board) on August 29, 1997, and is based on charges filed by International Union of Operating Engineers, Local 826, AFL–CIO and Local 351, AFL–CIO (the Charging Party or the Union). Effective about March 1, 1997, Local 826 and Local 351 merged with Local 351 being the surviving entity. The complaint as amended at the hearing alleges that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by unlawfully withdrawing recognition from the Union as the exclusive collective-bargaining representative of its employees in the following appropriate bargaining unit;[1] by refusing to bargain with the Union, refusing to furnish information necessary for bargaining to the Union; bypassing the Union and dealing directly with unit employees; and instituting unilateral changes in the terms and conditions of employment of the unit employees; and that Respondent violated Section 8(a)(3) and (1) of the Act by issuing written disciplinary memoranda to its employees Ken Forge and David Futty because of their engagement in union activities and concerted activities and to discourage employees from engaging in these activities; and violated Section 8(a)(1) of the Act by unlawfully interrogating its employee George Pike concerning his own and other employees' engagement in protected concerted activities without advising him of his rights to refrain from submitting to such interrogation and affording him his rights against reprisals as set out in *Johnnie's Poultry*, 146 NLRB 770 (1964). The Respondent has by its answer filed as supplemented at the hearing and in brief denied the commission of any violations of the Act.

On the entire record in this proceeding, including my observations of the witnesses who testified here and after due consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

A. The Business of Respondent

The complaint alleges, Respondent admits, and I find that at all times material here Respondent has been a Virginia corporation, with an office and place of business in Fort Worth, Texas, where it has been engaged in the business of providing maintenance services at the Western Currency Plant of the United States in Fort Worth, Texas; that during the past 12 months Respondent, in conducting its business operations, received gross income from its contracts with the United States Government in excess of $1 million and purchased and received at its Fort Worth, Texas facility, goods valued in excess of $50,000 directly from sources located outside the State of Texas and that Respondent has been an employer within the meaning of Section 2(2), (6), and (7) of the Act.

B. The Labor Organization

The complaint alleges, the Respondent admits, and I find that at all times material here, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

The Alleged Unfair Labor Practices

The Union was certified to represent the unit employees on December 24, 1992. The parties engaged in bargaining for a labor agreement in 1993 and did not reach agreement. In July 1995, the Respondent declared an impasse and unilaterally implemented its proposal. Unfair labor practice charges were brought against the Respondent for its implementation of its proposals and there was an interim decision by an administrative law judge holding that the parties had reached an impasse in bargaining and that the Respondent had not violated the Act as there was a lawful impasse at which time Respondent unilaterally imposed its final offer. The Respondent sought to develop this at the hearing and I sustained the objections of the General Counsel and counsel for the Charging Party that this was not relevant to the issues in the case before me. I ordered that Re-

[1] The unit consist of:

INCLUDED: All service and maintenance employees working for the Employer at the Western Currency Plant in Fort Worth, Texas.
EXCLUDED: All other employees, including office clerical employees, quality control employees and administrative assistants, supervisors, including weekend supervisors, and guards as defined in the Act.

spondent's rejected exhibits be placed in the rejected exhibits file and rejected his various offers of proof at the hearing to elicit testimony and documentary evidence concerning the bargaining in 1995. I reaffirm all of those rulings; and find that the bargaining events between the parties in 1993 through 1995 have no relevance to the instant case.

The alleged withdrawal of recognition and refusal to furnish information and refusal to bargain violations center around a series of correspondence between the Union and the Respondent in the late summer and fall of 1996, and culminating in July 1997. The Union's business representative and president, Barney Allen, requested information for purposes of bargaining in September 1996 and thereafter was refused this information by Respondent's legal counsel, Buddy David, and David ultimately, withdrew recognition from the Union on behalf of Respondent in July 1997. On September 20, 1996, Allen sent Respondent a letter asking for information and requesting bargaining dates. Allen testified that in late August 1996 a meeting of the Union's members was held and a new group chairman (Kenneth Forge) was elected. He testified there was a renewed interest in bargaining on the part of the unit employees as a contract between the Respondent and the United States Bureau of Engraving and Printing (BEP) was set to expire at the end of September and the unit employees had not received a wage increase in 3 years. The employees reported that they were being told by Respondent's management that there would be classification changes and possible decreases in wages as a result. The parties had not met since September 1994. Prior to this the parties had not bargained since September l993. Pursuant to the meeting with the employees, Allen initiated several requests for information and for meetings to bargain. I credit Allen's unrebutted testimony. The letters and the responses received from the Respondent are as follows:

On September 20, 1996, the Union's business manager, Barney Allen, wrote a letter to John L. Rulison, Respondent's president, with a copy to Respondent's attorney, E. D. David, who had previously represented the Respondent during past negotiations with the Union and who represented Respondent at the instant hearing in these cases before me.

His letter stated as follows:

> *I. U. O. E., Local 826 requests a date for collective bargaining. Please let me know when Raven Company representatives can be available.*
>
> *Since it has been some time since we have had communication, the Union needs to update our information. Please provide me with a detailed description of all benefit plans, including the current medical plan, a copy of the Company rules, a list of current classifications and pay rates, and a copy of any employee booklets or manuals. Also provide a work schedule showing the hours of work and the employees shift assignments.*
>
> *Thank you.* [Emphasis added.]

On September 30, 1996, Respondent's attorney, E. D. David, responded by letter to Allen, acknowledged receipt of Allen's letter of September 20, and in reply stated, "*Please refer to my letter of July 28, 1995, a copy of which is attached*" [emphasis added]. The letter states as follows:

> We have now had an opportunity to analyze your proposal and are frankly shocked by the contents. You will recall at the very first negotiating session and throughout you have insisted that once you agreed on an article, that you would not revisit that position. Contrary to that position, you have now put back on the table a number of positions over which we have already reached impasse. Specifically, you have put back on the table a closed shop and a check-off to which, as you know, the Company is not going to agree.
>
> Without in any way being exhaustive, you have made the following changes to items on which we had reached agreement:
>
> 1. You have made a strict seniority proposal whereas we had already agreed to and crafted over a number of negotiation sessions skill and ability type language.
>
> 2. You have left out the performance bonus.
>
> 3. You have imposed shift differentials.
>
> 4. Your language at 10.05 for filling shifts is not acceptable. At our last negotiation session, we worked out excruciating language to meet both sides' objectives and you agreed to that. You now are withdrawing and taking us back to square one.
>
> 5. With regard to personal leave, you now have reopened that matter, even though we had agreed to carefully crafted language.
>
> 6. You have reopened the entire sore of who pays the arbitrator in the event of a losing arbitration.
>
> 7. You have added proposed wage increases of 3-1/2 percent per year, which is significantly more than your last offer.
>
> The long and short of this is that you have not made one single proposal on the issues which had kept us apart when we last negotiated and, in fact, have already negotiated and reached agreement. *Under these circumstances, we see that there is no need to meet and negotiate.* We see your whole proposal as made in bad faith. [Emphasis added.]

On October 14, 1996, David wrote another letter to Allen on behalf of Respondent which stated:

> Please note my new address, above.
>
> I'm in receipt of letter that you have written to ask for negotiations in the above matter. *Please refer to my letter of July 28,*[2] 1995, a copy of which is attached. [Emphasis added.]

On October 22, 1996, Allen sent another letter to David which states as follows:

> *In my letter of September 20, 1996, I requested information that you have not responded to. Please send the requested information within seven days.*
>
> Your letter of July 28, 1995 has nothing to do with our latest negotiations request.
>
> *It's been well over a year since we submitted proposals to Raven.*
>
> *We are in the process of developing new proposals for the upcoming negotiations. Our proposals will be substantially changed from those previously submitted*. [Emphasis added.]

On November 5, 1996, Allen sent another letter to as follows:

> *On September 20, 1996 I requested certain information from* Raven Services Corporation. *On October 22, 1996 the Union sent another follow up request*. [Emphasis added.]
>
> *Please respond to our request by the close of business November 8, 1996*. [Emphasis added.]

[2] This is the same letter of July 28, 1995, referred to in David's letter of September 30, 1996.

On November 7, 1996, David sent another letter to Allen as follows:

> *The information which you requested in your letter of September 20, 1996 has not significantly changed since we last met*. [Emphasis added.]

On March 13, 1997, Allen sent another letter to David as follows:

> International Union of Operating Engineers, Local 826 has become aware that your company has *discussed, proposed, and implemented changes in classifications, working conditions, wages, benefits and conditions of employment affecting bargaining unit employees* at the Bureau of Engraving and Printing (BEP) Western Currency Plant. [Emphasis added.]
>
> Be advised that I.U.O.E., *Local 826 is the exclusive collective-bargaining representative of "all service and maintenance employees*" employed by your company at the BEP Western Currency Plant. [Emphasis added.]
>
> *I.U.O.E., Local 826 has made repeated attempts to schedule collective-bargaining negotiations with your company. We have been and continue to be prepared to bargain with your company on all legal subjects of collective-bargaining at the earliest possible date and time.* [Emphasis added.]
>
> *Your immediate response is requested*. [Emphasis added.]

On April 9, 1997, Allen sent another letter to David as follows:

> It has come to my attention that the *Company has implemented unilateral changes in wages and benefits due to an Agreement between Raven and the BEP*. [Emphasis added.]
>
> Please provide the Union a copy of said Agreement.

On June 6, 1996, Respondent's project manager of its Bureau of Engraving and Printing jobsite sent a memorandum to all personnel employed at their jobsite as follows:

> *As mentioned in the previous contract meeting, a Contract requirement is that all Raven Craft Personnel complete training on all site-specific equipment that we are responsible for operating, maintaining, and/or repairing*. This is necessary to insure individual familiarization with the equipment and systems assigned, and to understand the important aspects of all operating, maintenance and repair tasks as well as the safety related concerns. [Emphasis added.]
>
> The mechanics of this Maintenance Training Program (MTP) is as follows:
>
> 1. A *quiz will be given* to determine required knowledge and understanding of all unit equipment and systems before proceeding to the next training unit. [Emphasis added.]
>
> A *score of 75 must be achieved* to receive each unit's credit, ie., boilers, chillers, etc. A score of less than 75 on any of the course units will require unit reading and classroom work according to the training outline and assigned by the Trainer. [Emphasis added.]
>
> 2. After the allotted time to review the unit manuals and the required level of understanding is achieved, the trainee will again be tested with the *expectation that a minimum score of 75 be achieved* before proceeding on to the next unit. [Emphasis added.]
>
> The allotted study and quiz time will be conducted during normal shift hours and charged to administration on your timecard.

On July 3, 1997, Allen sent another letter to David as follows:

> The *Union has learned* that *Raven is implementing a testing procedure for employees*. The *employees have been told that a passing score may be a condition of employment*. The *Union has not had the opportunity to bargain on this subject.* [Emphasis added.]
>
> *We request that Raven enter into bargaining on this subject as soon as possible.* [Emphasis added.]
>
> *Please contact me to arrange a meeting*. [Emphasis added.]

On July 22, 1997, David sent another letter to Allen as follows:

> *With regard to your letter of July 3, 1997, the Company's position is that it does not believe that you or the Union any longer represent a majority of the employees and have set forth that position. Additionally, even if you represent the majority of the employees, our position is that everything that we are doing is permitted by the management rights clause which was negotiated and implemented when we reached impasse*. [Emphasis added.]

By its letter of July 22, 1997, the Respondent questioned the Union's majority status and withdrew recognition from the Union and the Union filed the charges giving rise to the complaint.

Unit employee Kenneth Forge testified that he had been employed by Respondent for 4 years at the time of the hearing. He is a stationary engineer and reports to Supervisor Richard Bonner. He has been committee chairman for the unit employees for 1 year and is the highest ranking union official at the plant. Forge testified he has worn union stickers and put them on his locker since he became committee chair a year ago. He has also updated the union bulletin board since he took over a year ago. It is undisputed that there is a union bulletin board on Respondent's premises which has been there at all times material herein. The bulletin board is near the break area. There is area wage determination information on the bulletin board. He has been posting union information on the bulletin board for more than a year such as notices of union meetings and directions to the union hall.

In September 1996 Project Manager Lowell Windahl asked Forge into his office to discuss changes in shift openings and bid procedures as Windahl was changing to a system of shift preference. Windahl also discussed openings in purchasing with Forge and told Forge that he had awarded this slot to a different individual. Windahl also told Forge that Respondent was initiating a new testing and training program for employees. He also told Forge that he was changing job descriptions and told him that he was giving an employee a wage increase. He also discussed a maintenance repair team.

In November 1996 Forge was called into a meeting with Windahl and his supervisor, Richard Bonner, to discuss his attendance record. They informed him that he had three unexcused absences and tardies and that the next incident would result in the issuance of discipline. Windahl informed Forge that a flat tire was not an excuse and that he needed a doctor's excuse for medically related absences and that management would rely on individual credibility determinations as to excused absences. Forge asked Windahl if all the employees' files were being reviewed and Windahl said they were. David Futty was also called in and his attendance was reviewed by Respondent. Forge gave Futty a union sticker as well as other employees.

Forge testified that in early March 1997 the entire day shift (approximately 18 to 20 individuals) except for 2 supervisors were

called into a conference room for a meeting conducted by Windahl and his 2 assistants. Windahl told the employees that the Respondent had received a new 5-year contract with BEP with a 2.5-percent pay increase and that Respondent would be implementing a shift differential for the second and third shift. He also told the employees that Respondent was in the process of getting a training program on track. He also told them there was a change in the uniform policy, but that the employees would not receive a uniform allowance.

Forge testified that he later spoke to Windahl and asked him to meet with the second- and third-shift employees and that Windahl did so and met with 16–18 employees at his request and answered their questions. Forge testified that he was tested in accordance with the new testing program in mid-July 1997.

Forge testified that in early July (1997), he met with Respondent's president, John Rulison, and asked Rulison if Respondent had any "hard feelings" concerning the employees voting for the Union in December 1992. Rulison said, "[N]o" but also stated that the employees did not need a union.

On cross-examination, Forge testified that former project manager, Kenneth Schatzer, was aware that he was a union steward. He put the notice of the union meeting on the bulletin board in August 1996. He knows that other employees with unexcused absences were not called in to meet with Windahl including employees Byron Judd, Pat O'Rourke, and probably Mike Lemmons. He testified that there was a subsequent posting that clarified the maintenance exam score of 75 percent. On redirect, Forge testified that although Windahl told him that all employees were being called in concerning their attendance, it "didn't happen." Windahl did not tell him that he had already reviewed all the employees' records.

General Counsel's Exhibit 12 issued to Forge is a memorandum dated November 4, 1996, and states:

> Subject: Unexcused Absence and Tardiness
>
> Ken, in reviewing your attendance record for 1996, as I am doing for everyone, your record indicates the following:
>
> | | |
> |---|---|
> | June 1 | Tardy |
> | June 23 | Absence Unknown |
> | July 21 | Absence Unknown |
> | September 12 | Tardy |
> | September 15 | Absence Unknown |
>
> Please give this unacceptable attendance and tardiness your immediate attention Ken so that future corrective action will not be necessary.
>
> Additionally, I will be available for discussions and counseling at any time to provide any assistance or help you may require.
>
> I sincerely hope this action will result in the correction of this unsatisfactory performance and that we can put these problems behind us in the future.
>
> I have read and fully understand
>
> Kenneth Forge 11/6/96
> Employer Signature
>
> Richard Benn 11/6/96
> Witness.

Futty was issued a virtually identical letter which listed six absences "Unknown" and seven instances of tardiness.

The General Counsel also called Richard O'Brien, a maintenance worker on the night shift and a 5-year employee at the time of the hearing. He testified that he has received a shift differential since March 1997. He and two other maintenance employees and several other unit employees attended a meeting held by Plant Supervisor Richard Bonner in late September or early October 1996 concerning the contract extension with BEP. Bonner explained the contract extension, changes in jobs, elimination of jobs, new positions and duties, and rotating shifts. In March 1997, he attended a training program meeting held by Windahl and another of Respondent's representatives with several unit employees at which Windahl explained the training program tentatively approved by BEP.

After the General Counsel rested his case the Respondent put on its case. In his opening statement the Respondent's counsel contended that the foregoing meetings were informational only and did not constitute bargaining with the employees. With respect to the attendance meeting and memoranda issued to Forge and Futty, he contended that Windahl spoke to all employees who had three or more absences or tardies. He contended that Respondent had a good-faith doubt of the Union's majority status so as to legally permit the withdrawal of recognition and the attendant refusals to bargain and to furnish information and the unilateral changes and direct dealing with the unit employees. He based the good-faith doubt on eight points:

> 1. Evidence of a dissident group or movement to unseat the Union;
> 2. knowledge of a decertification petition circulated among the employees;
> 3. signing of the decertification petition by the union representative;
> 4. substantial employee turnover in the last 5 years;
> 5. no notification of union stewards since 1993;
> 6. no knowledge of union membership meetings;
> 7. evidence of a lack of union presence at the jobsite; and
> 8. an unjustifiable union hiatus from bargaining and perhaps even abandonment.

Respondent contends in the alternative that even if it is found not to have had a good-faith doubt, none of the actions it took required it to go back to the bargaining table in reliance on the contract provisions they had bargained to impasse, particularly the management rights clause.

The Respondent called unit employee, George Pike, in its case. Pike would be a 5-year employee with Respondent as of October 1997. Pike prepared a petition to decertify the Union between January and April 1996 and obtained 27 employees' signatures on it. He presented it to union committeeman and chief steward, T. Blevins, and told him the employees were dissatisfied with the Union. Forge signed the petition. Blevins looked at the petition and Blevins told him that he had informed Allen of it and that Allen told Blevins the Union would not withdraw voluntarily. The petition stated, "We the undersigned employees petition NLRB to decertify the Operating Engineers Union as our bargaining agent."

On cross-examination by the General Counsel, Pike testified that the petition could have been circulated as early as November or December 1995. He does not know if Blevins signed the petition. He never filed the petition with the Board and the petition was solely in his hands until he destroyed the petition. When he circulated the petition, he told the employees that they needed to sign the petition to get a different union. No supervisor or member of management was ever aware of the petition. After he received word from Blevins that the Union would not voluntarily accept the petition and withdraw, the unit employees said to leave things as

they were with the Union remaining as the collective-bargaining representative. Pike is a member of the Union and signed a union authorization card September 1996 and again in 1997. He never had any conversation with any member of Respondent's management concerning the decertification petition until he was called into Windahl's office on September 8, 1997, shortly prior to the instant hearing at which time Windahl asked him how many people had signed the petition and when it had been circulated. On September 9, 1997, he was called into Windahl's office again and was put on a three-way conference call with Robert Pittman, Respondent's vice president, and Buddy David, the Respondent's attorney in this case, and David asked him how many people had signed the petition and whether a majority of employees supported the Union. He did not give a copy of the petition to Blevins. He told David he had not talked to any supervisor concerning the petition. On cross-examination by the Charging Party, he testified that he was not told by the Respondent's representatives why they wanted this information. Nor was he given any assurances that he would not suffer any reprisals or that no actions would be taken against him if he failed to give the Respondent the information it sought. On redirect, Respondent's counsel, David, asked him whether the Respondent "knows" (present tense) of the petition and he answered that he "assumed" the Respondent "knows" (present tense).

The Respondent also called Richard Bonner, its plant operations supervisor. Bonner has been employed by Respondent since April 1992. Prior to his promotion to his present position, he was a supervisor on the evening shift when he was told of the circulation of the petition by unit employee Buck Cluff, and he passed this information on to Kenneth Shastner, who was then Respondent's project manager at this jobsite. Bonner never saw the petition and has no idea how many signatures were on the petition. Shastner said he would make a note of it. He does not know whether Shastner did so. Bonner has seen union authorization cards passed around. He has not been aware of any union activity since this time.

Respondent also called Lowell Windahl, its project manager since June 1996. Windahl testified he was not aware of the presence of the Union when he arrived in June 1996 as a new employee with Respondent and testified that he was not aware of any union involvement in any of the meetings he has held with employees. He only recently became aware of the union bulletin board which he admitted does exist on Respondent's premises.

With respect to the attendance meetings Windahl testified that he reviewed all the employees' attendance records in October 1996 going back to January 1996 and called in employees with in excess of three absences or tardies and Futty, Kenneth Forge, and Tony Harris had three or more unexcused absences or tardies. He testified he was not aware that Forge was a union representative when he called him in and issued the memorandum to him. He contends that the memorandum is not discipline but is a prelude to it as it states that disciplinary action will follow if the employee does not improve. He did not call in employee Warren Anderson who had numerous problems and was already under corrective action.

Respondent also called Vice President Pittman who supervises Government contracts including the one involved at this jobsite. He testified that he never received information that Forge was a union steward.

Respondent also called its president and owner, John Rulison, who testified that Shastner had told him that a decertification petition was being circulated. Respondent's Exhibit 7 is a list of events he prepared for this hearing on which he relied for his decision to withdraw recognition from the Union. He cited the early 1996 information received from Shastner and the lack of union activity until 9 months later when the Union requested bargaining as the evidence on which he based his alleged good-faith doubt of a lack of majority as well as the past bargaining with the Union's representative, Allen.

After the Respondent closed his case, the General Counsel moved to amend the complaint to allege that on September 8, 1997, Respondent had unlawfully interrogated its employee (Pike) about his union activities through Lowell Windahl and had on September 9, 1997, unlawfully interrogated its employee (Pike) about his union activities by Windahl, its Vice President Robert Pittman, and its Attorney E. D. David in reference to the two instances when the aforesaid agents of Respondent interrogated Pike concerning the decertification petition circulated by Pike.

The General Counsel also moved to amend the complaint to allege that on or about October 1996, Respondent unilaterally eliminated job classifications of bargaining unit employees, which were mandatory subjects of bargaining, without affording the Union prior notice and the opportunity to bargain concerning these unilateral changes in these terms and conditions of employment. The General Counsel also moved to add an additional allegation that Respondent on or about March 5, 1997, unilaterally changed the bargaining unit wages, mandatory subjects of bargaining, without affording the Union an opportunity to bargain with Respondent concerning this change in the terms and conditions of the bargaining unit employees. The Charging Party joined in the motion. The Respondent objected to these amendments, contending there was no evidence to support the unlawful interrogation amendment and that all of the other amendments sought were within the Charging Party's knowledge and were untimely. The General Counsel responded that the additional unilateral changes related back to September 1996, and were closely related to the violations occurring in that time period and thus were timely filed.

I granted the amendments and stated at the hearing, "in the interest of ensuring that this case is fully briefed, I'm going to forego the bench decision in this case" which I had previously advised the parties that I was considering issuing after the taking of evidence. At no time did the Respondent ask for an opportunity to address these allegations at the hearing although its witnesses were available to it. Nor did Respondent ask for additional time. Moreover, in answer to my question at the hearing after I assigned a briefing date, whether there was anything further before I closed the record, the Respondent's counsel said, "Nothing from us." It was not until Respondent filed its brief that the Respondent therein contended it must be given the opportunity to present evidence with respect to these charges." The General Counsel has filed an "Opposition To Respondent's Motion To Receive Additional Testimony," and a "Motion To Strike Portions of Respondent's Brief." I find the amended allegations have been fully litigated, Respondent had the option of requesting permission at the hearing to present additional evidence, but declined to do so and I further find that the unilateral changes are not time barred but are closely related to the complaint allegations and that Respondent has had the opportunity to address them in its brief and did so. Respondent's request in its brief to present additional evidence is denied. Section 102.35(8) of the Board's Rules and Regulations authorizes administrative law judges "to order hearings reopened" without setting the standard for doing so. I am guided however, by Section 102.48(d) of the Board's Rules and Regulations setting the standard for requests to reopen the record filed with the Board which are that "a motion to reopen the record shall state briefly the additional evidence to be adduced, why it was not presented previously, and that, if ad-

dressed and credited, it would require a different result." The Respondent's motion to reopen the record in its brief does not comply on its face with this standard. Nor does it assert any reasonable grounds for reopening the record. See *Pincus Elevator & Electric Co.*, 308 NLRB 684 (1992). The General Counsel's motion to strike portions of Respondent's brief at pages 2–4 thereof, as they reference record evidence in this matter set forth in rejected exhibits and rejected offers of proof is granted and they are striken insofar as they relate to the subject matter of a prior unfair labor practice trial prosecuted against Respondent in September 1994 and the interim decision of the administrative law judge in that case. *Electro-Tec, Inc.,* 310 NLRB 131 (1993); *Today's Man*, 263 NLRB 332 (1982).

Analysis

The 8(a) (5) and (1) Allegations

I find that the Respondent violated Section 8(a)(1) and (5) of the Act by its withdrawal of recognition from the Union, its refusal to furnish information, its bypassing of the Union as the collective-bargaining representative of the unit employees, its engagement in direct dealing with the employees, and its implementation of unilateral changes in the terms and conditions of its employees without affording the Union notice thereof and an opportunity to bargain concerning them. It is well established that a certified collective-bargaining representative enjoys a rebuttable presumption of majority support of the unit employees. In order to rebut this presumption of continued majority status to justify a withdrawal of recognition, the Employer must establish by objective criteria that it has a good- faith doubt that the Union enjoys majority support. A good-faith doubt may only be asserted in the absence of unfair labor practices. In the instant case the Respondent has wholly failed to rebut the presumption of the Union's majority status by a preponderance of the evidence.

In *Alexander Linn Hospital Assn.,* 288 NLRB 103, 107 (1988), enfd. 866 F.2d 632 (3d Cir. 1989), cited by the General Counsel the Board cited language quoting *Burger Pits,* 273 NLRB 1001 (1984):

> It is well settled that absent unusual circumstances a union enjoys an irrebutable presumption of majority status during the first year following its certification. After the certification year the presumption of majority status becomes rebuttable. Whether certified or voluntarily recognized, a union also enjoys a rebuttable presumption of majority status upon the expiration of a collective-bargaining agreement. An employer who refuses to bargain with an incumbent union may rebut the presumption of majority status by establishing either (1) that at the time of the refusal to bargain the union in fact did not enjoy majority status, or (2) that the refusal was predicated on a good-faith and reasonably grounded doubt, supported by objective considerations, of the union's majority status. [Footnotes omitted.]

Moreover, the Employer has failed to establish that its withdrawal of recognition on the basis of a good-faith doubt of the Union's majority status was asserted in the absence of unfair labor practices. Rather, the evidence shows that the Respondent summarily refused to furnish relevant bargaining information requested by the Union and refused to bargain with the Union and bypassed the Union and dealt directly with bargaining unit employees and instituted unilateral changes in the wages, hours, and other terms and conditions of employment of the bargaining unit employees long prior to its withdrawal of recognition from the Union in July 1997. Respondent's reliance on secondhand hearsay that a decertification petition had been circulated 6 to 9 months to a year prior to the withdrawal of recognition largely on the basis of the petition as well as alleged inactivity of the Union from its viewpoint is insufficient to meet the Respondent's burden in attempting to justify its withdrawal of recognition from the Union. In *Pollock Mfg.*, 313 NLRB 562 fn. 2 (1993), the Board held that the Respondent had not shown "by a preponderance of the evidence either actual loss of majority support or objective factors sufficient to support a reasonable and good-faith doubt of the union's majority," citing *Laidlaw Waste Systems,* 307 NLRB 1211 (1992), when it relied on a petition that the Respondent had never seen, and the Respondent did not know what the petition stated or the number of employees who had signed it. This is clearly what happened in the instant case as the Respondent made no effort to ascertain if the decertification petition truly existed and whether it had been signed by a majority of the unit employees and did not at any time raise this alleged doubt with the Union. Rather, it did nothing until the Union attempted to obtain bargaining information and revitalize negotiations in the fall of 1996 and then chose to rely on an alleged impasse in bargaining in 1995 as a basis for its refusal to furnish information and its subsequent withdrawal of recognition. Further, the Respondent did not make any effort to discover whether such a petition existed until September 8 and 9, 1997, a week prior to the instant hearing held on September 15, 1997, at which time its representatives interrogated the employee who had allegedly circulated the petition without affording him his rights to refuse to submit to such an interrogation and without making assurances to him that he would not be discriminated against if he refused to discuss the matter with Respondent's representatives thus violating Section 8(a)(1) of the Act by such interrogation. *Johnnie's Poultry*, supra; *Le Bus*, 324 NLRB 588 (1997). The Respondent has objected to the amendment of the complaint which I permitted at the close of testimony in this case to which it objected. However, the Respondent's attorney, Windahl, and Pittman who engaged in the interrogation of Pike were all present at the hearing but Respondent made no offer of proof concerning their testimony nor did it request the opportunity to rebut Pike's testimony. Thus the Respondent waived the opportunity to rebut Pike's testimony at the hearing but did address this issue in its brief. I find the issues have been fully litigated.

With respect to Respondent's contentions that it was free to refuse to bargain with the Union, refuse to furnish it bargaining information and that it could deal directly with the bargaining unit employees and institute unilateral changes on the basis of an alleged impasse in bargaining in 1993, and a management-rights clause contained in its proposal, I find these contentions to also be without merit. In *Hospitality Care Center*, 307 NLRB 1131, 1135 (1992), the judge held (in a decision affirmed by the Board) that the failure of the employer to provide the union with relevant information effectively prevented the union from breaking the impasse. Assuming there was a valid impasse in September 1996, in the instant case, Respondent's refusal to provide the Union with the requested information based on a 3-year impasse was unlawful as it prevented the Union from obtaining relevant information requested by the Union to revise its proposals in order to break the alleged impasse. In *Airflow Research & Mfg. Corp.*, 320 NLRB 861, 862 (1996), the Board held that the employer violated Section 8(a)(5) of the Act by refusing the request of the union to bargain 13 months after a lawful impasse in negotiations for an initial collective-bargaining agreement. The Board stated that "an impasse does not destroy the collective-bargaining relationship. Instead a

genuine impasse merely suspends the duty to bargain over the subject matter of the impasse until changes in circumstances indicate that an agreement may be possible." In *McClatchy Newspaper*, 321 NLRB 1386, 1389–1390 (1996), "impasse is always viewed as a temporary circumstance and the impasse doctrine . . . therefore, is not a device to allow any party to continue to act unilaterally or to engage in the disparagement of the collective-bargaining process." In *Gulf States Mfg. Inc. v. NLRB*, 704 F.2d 1390, 1399 (5th Cir. 1983), the Court stated:

> Anything that creates a new possibility of fruitful discussion (even if it does not create a likelihood of agreement) breaks an impasse: a strike may . . . so may bargaining concessions, *implied* or explicit . . . the mere passage of time may also be relevant [citations omitted] [emphasis added].

I find in the instant case that the Union's letter of October 22, 1996, clearly *implied* that the Union intended to offer bargaining concessions.

With respect to the Respondent's reliance on its management-rights clause in its implemented offer as the basis for its direct dealing with its employees and its unilateral changes thus, bypassing the Union, I find this contention is also without merit as there had been no final agreement on this proposal and there was no clear and express waiver by the Union concerning this direct dealing and the implementation of unilateral changes.

Although there was a bargaining hiatus since the events of 1995 regarding the alleged impasse in negotiations, the Respondent did not produce any evidence at the hearing of employee disaffection with the Union which had been communicated to the Respondent with the exception of the hearsay information reported to Rulison concerning the circulation of a decertification petition. The record is otherwise barren of any evidence of employee disaffection with the Union which had been communicated to the Respondent. In *Spillman Co.*, 311 NLRB 95 (1993), the Board found that there was no evidence that the employees had expressed to the Respondent their dissatisfaction with the union which the employer must show if it relies on employee turnover to support its alleged good-faith doubt of the union's majority status and the Board cited its adoption of a "rebuttable presumption that newly hired employees will support a union in the same ratio as the employees they replace," citing *Colson Equipment*, 257 NLRB 78, 79 (1981), enfd. in relevant part 673 F.2d 221 (8th Cir. 1982). In *T.L.C. St. Petersburg*, 307 NLRB 605 (1992), the Board agreed with the administrative law judge's finding that no weight should be given to hearsay testimony by the president concerning statements allegedly made to an employee and a supervisor and conveyed to the president in which certain employees purportedly repudiated the union.

The 8(a)(3) and (1) Allegations

With respect to the allegations concerning the memoranda issued to Forge and Futty, I find the General Counsel has established that Respondent was aware of Forge's position as a union steward or representative. Forge testified he had served as a steward since March 1996, and that former project manager, Kenneth Shatzer, was aware that he was a steward as of March 1996, although he was not elected as the operating engineer's committee chairman until August 1996. It is undisputed that the Union never notified the Respondent of Forge's position as a steward. However, in early September 1996, then Project Manager Windahl called Forge into his office and in a meeting between just the two of them discussed a number of mandatory subjects of bargaining such as shift openings and bid procedures and a new testing program with Forge which would affect the bargaining unit members during a half hour to 45 minutes' discussion according to Forge's unrebutted testimony which I credit. I find this supports the General Counsel's position that the Respondent was aware of Forge's position as a steward, if not as the committee chair. I do not credit Windahl's testimony that he was unaware of the union presence on the project. I find it highly improbable that this information would not have been conveyed to him when he was hired as the Respondent's highest ranking member of management on the project site. I also credit Forge's unrebutted testimony that he posted notices on the union bulletin board on the project premises in September 1996. I do not credit Windahl's testimony that he was unaware of the existence of the union bulletin board until 2 or 3 months prior to the hearing. I thus find that the General Counsel has established that Respondent had knowledge of Forge's status as a union steward. I find, however, that the General Counsel has not established that Respondent was aware of Futty's union activities although, Forge testified he gave Futty a union sticker as well as other employees who signed union authorization cards shortly after Forge became union committee chairman in August 1996. The record is otherwise silent as to any participation by Futty in union activities and/or Respondent's knowledge thereof. Futty was not called to testify. I find Respondent's animus toward the Union has been established by the 8(a)(5) and (1) violations as set out in this decision.

I find, however, that the General Counsel has failed to establish that Forge and Futty received disparate treatment by the issuance of the memoranda to them regarding their absences. I find that the memoranda was discipline. Although its tone was soft, it conveyed the message of "further" adverse disciplinary action ("corrective action") if the employees did not improve their attendance records. However, I credit the testimony of Windahl that he issued the memoranda to the only three employees (including Forge and Futty) who had three or more absences except for Anderson who was already under corrective action. I decline to make an adverse inference against the Respondent for not producing all of the records of its employees as requested by the General Counsel. It is clear that the General Counsel could have or did have access to Respondent's records by way of subpoena if he chose to and did not offer the records of any employees who may have had three or more unexcused absences although it did obtain the memoranda issued to Forge and Futty which it introduced as General Counsel's Exhibits 12 and 13. The General Counsel has the burden of proof in establishing a violation of the Act and I find it failed to establish evidence of disparate treatment and failed to establish a prima facie case of a violation of the Act by the issuance of the memoranda to Forge and Futty. Assuming arguendo that it did establish a violation, I find it has been rebutted by the preponderance of the evidence. *Wright Line*, 251 NLRB 1083 (980), *Manno Electric*, 321 NLRB 278 (1996).

CONCLUSIONS OF LAW

1. Respondent Raven Services Corporation d/b/a Raven Government Services, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union of Operating Engineers, Local 351, AFL–CIO, the surviving entity following its merger with International Union of Operating Engineers, Local 826, about March 1, 1997, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All service and maintenance employees working for the Employer at the Western Currency Plant in Fort Worth, Texas.

EXCLUDED: All other employees, including office clerical, quality control employees and administrative assistants, supervisors, including weekend supervisors, and guards as defined in the Act.

4. At all material times, the Union has been, and is, the exclusive statutory representative of the Respondent's employees in the above-described unit, within the meaning of Section 9(a) of the Act, for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. Respondent has failed to establish that at any material time, it entertained a good-faith doubt of the Union's exclusive status as the majority representative of its employees in the above-described unit or that the Union abandoned the bargaining unit.

6. Commencing on or about October 14, 1996, by refusing to bargain with the Union as the statutory representative of the unit employees, and by refusing to furnish the Union with the following information: a detailed description of all benefit plans including the current medical plan; a copy of the Respondent's rules; a list of current classifications and pay rates; a copy of any employee booklets or manuals; and a work schedule showing hours of work and the employees' shift assignments; all of which information sought by the Union was and is necessary and relevant to the Union's performance as the exclusive collective-bargaining representative of the unit, Respondent violated Section 8(a)(1) and (5) of the Act.

7. By unilaterally eliminating job classifications of its employees in October 1996; and on or about March 15, 1997, unilaterally changing wage rates of its unit employees and implementing a shift differential on or about March 15,1997; bypassing the Union about September 15,1996, and dealing directly with the unit employees with respect to changes in the way shift openings would be filled, changes in job classifications, and future job performance testing of unit employees and bypassing the Union about late September or early October 1996 and dealing directly with the unit employees by discussing changes in job responsibilities, elimination of the HVAC technician position, changing general mechanics to general technicians with a commensurate increase in pay, shift differential and call forwarding, and changing job classifications; by on or about June 6, 1997, unilaterally implementing a maintenance training program for its unit employees, all of the foregoing of which were mandatory subjects of bargaining, without affording the Union prior notice and an opportunity to bargain with Respondent concerning these mandatory subjects of bargaining, Respondent violated Section 8(a)(1) and (5) of the Act.

8. By withdrawing recognition from the Union as the exclusive collective-bargaining representative of the unit on or about July 22, 1997, the Respondent violated Section 8(a)(1) and (5) of the Act.

9. By interrogating its employee on or about September 8 and 9, 1997, concerning his union activities and those of his fellow employees without advising him of his right to refrain from answering such questions and offering him assurances that he would not be discriminated against if he refused to furnish the information, Respondent violated Section 8(a)(1) of the Act.

10. Respondent did not violate the Act by warning its employees Forge and Futty for excessive absences and tardiness.

11. The foregoing unfair labor practices in conjunction with the Respondent's status as an employer under the Act affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it cease and desist therefrom, and from interfering in any like or related manner with its employees' Section 7 rights and that it take certain affirmative actions designed to effectuate the policies of the Act including the posting of an appropriate notice. I recommend that the Respondent be ordered to recognize and on request bargain with the Union, furnish the Union with the information it unlawfully refused and failed to furnish to the Union, and if an understanding is reached, embody the understanding in a signed agreement, rescind the unilateral changes on request by the Union and make the unit employees whole for any loss of pay or benefits sustained by the unlawful actions as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Nothing in this Order shall be deemed to require that any increases in wages and benefits to the unit employees be rescinded.

On these findings of fact and conclusions and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Raven Services Corporation d/b/a Raven Government Services, Inc., Fort Worth, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from the Union and refusing to recognize and bargain with International Union of Operating Engineers, Local 351, AFL–CIO as the exclusive representative of its employees in the following appropriate unit:

INCLUDED: All service and maintenance employees working for the Employer at the Western Currency Plant in Fort Worth, Texas.

EXCLUDED: All other employees, including office clerical employees, quality control employees and administrative assistants, supervisors, including weekend supervisors, and guards as defined in the Act.

(b) Failing and refusing to furnish the Union with information as found above.

(c) Bypassing the Union and dealing directly with unit employees as found above.

(d) Instituting unilateral changes in the unit employees' terms and conditions of employment as found above.

(e) Interrogating its employees concerning their union and concerted activities and those of their fellow employees.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative actions designed to effectuate the policies of the Act.

(a) Recognize and on request bargain with International Union of Operating Engineers, Local 351, AFL–CIO as the collective-bargaining representative of the employees in the above-described

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

bargaining unit and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish to the Union in a timely manner the relevant information requested by the Union as found above.

(c) On demand by the Union rescind the unilateral changes found unlawful here. Nothing in this Order shall require that any increases in wages or benefits be rescinded.

(d) Make whole the unit employees for any loss of pay or benefits they may have suffered as a result of Respondent's aforesaid violations of the Act in the manner described in "The Remedy."

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at the facility in Fort Worth, Texas, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or removed its presence from the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1996.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."